1948

File No. O. Leg. 1/48

Legal **DEPARTMENT**

A **BRANCH**

Subject:—

Opinions under the Land Acquisition Act, 1894

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MM
dated 22-6-'50

31/5

Office of the R.L.A.

Section 17 of the Land Acquisition Act, 1894, authorises the taking of possession of any waste or arable land needed for public purposes or for a company. It appears from the report made by the Collector that the land in question is a tank which is not in use. According to Dr. Murray's New English Dictionary, "waste" means not cultivated or used for any purposes; and "arable" means capable of being ploughed, fit for tillage. It is presumed that the tank, which is described as Kharcha land, is not used or occupied for any purpose, nor is cultivated; and that it is also capable of being ploughed. In that case, it can be said to be both waste and arable. Either description is sufficient for the application of section 17, and I am, therefore, disposed to think that the section can be invoked in this case.

Td/-P.N.L. 26/1

~~P.N.L.~~

Remembrancer of Legal Affairs.

U.R. to R.D. No. 48 Confl. dated the 26th January 1948.

MM

SC dated 22-5-'56.

Acquisition of additional area built upon by Government.

Land Acquisition Act, 1894 Sections 4A & 17

Office of the R.L.A.

The point raised by the U.S., R.D. is covered by the recent R.L.A's opinion No.11470, dated the 1st December 1947. There is no objection to Notifying the additional area under sections 4 and 6 of the Land Acquisition Act, 1894. Since the land is already in possession of Government andis built upon, it is no longer arable and waste and the emergency clause cannot be applied (c.f. R.L.A's No.11470, dated 1-12-47).

Idt P.M.L. 22/1

~~P-W-LRR~~

Remembrancer of Legal Affairs.

U.R. to S.D. No.681 ; dated the 27th January 1948.

Subd. for signature.

MM

SC dated 22-5-'50.

Office of the R.L.A.

Acquisition of additional area in excess of the area already notified.

Land Acquisition Act, 1894 - Sections 4,6.

This case is on all fours with that considered in R.L.A's opinion No.7807, dated the 29th July 1947. The survey No. 21-A Hissa No. 3-B/1/Kharif specified in R.D.Notifications Nos. 8, 112, dated 11-6-1945 and 386/45, dated 25-6-1945 as amended by No. 386/45, dated 12-5-1947 describe the land needed for a public purpose with sufficient precision and the description as to the area can therefore be held to be surplusage. A plan of the land to be acquired was also put up for inspection at the office of the Special Land Acquisition Officer, Ahmd. The mistake in the statement of the measurement of the area is of no consequence. It is therefore not necessary to issue notifications under sections 4 and 6 in respect of the excess area as proposed by the Commissioner, S.D. (Cf. R.L.A's opinion Nos.O.Leg 11/29, dated the 6th November 1929;see also sub-para. 3 of para. 109 of the Land Acquisition Manual).

P M [illegible]
Remembrancer of Legal Department.
Affairs.

U.R. to R.D., No. 386 , dated the 13th January 1948.

Subd. for signature.

MM

SC dated 22-6-...

Office of the R.L.A.

Statement of the Case.

It appears that certain lands at Yerwada Taluka Poona were acquired for public school for Parsee boys and were notified for acquisition in 1931. In 1941 Government was informed that the idea of constructing the Parsee school at Yerwada was given up and that the lands acquired for the society should be taken back by Government when developed into a housing scheme or in the alternative the society should be allowed to do the same. Government then consulted the R.L.A.who in his opinion No. 4880 dated 27th May 1941 opined that if the society was willing to express in writing its clear and unequivocal decision to abandon the public school scheme for which the land was acquired and relinquish the lands to Government upon undertaking to idemnity Government against any litigation there would be no objection to Government accepting the relinquishment whereupon it would be open to Government in whom the lands would vest absolutely to hand over the lands to the Secretary or to utilise the lands itself in such manner as it might deem fit. On 22nd July 1941 the Collector of Poona reported that the lands in questions were suitable for healthy development for building purposes but that as they were far away from the city and looked water supply their disposal was likely to take a long time. He also reported that the original owners of the lands were not willing to take back the lands and that he had no objection to the lands being disposed of either to the society or to Sir Cowasjee Jehangir for development, provided that military requirement did not suffer. After consulting the R.L.A. and the Advocate General, the Secretary to Government in R.D. informed Sir Cowasjee Jehangir, on 5th May 1942, that the lands in question inclusive of Government land bearing survey Nos. 33/1-B and 235A and a strip of a land under a road which had not been

• R.D.file 1492/28 Pt. I,p.215.

-do- part III pp.5-7

-do- pp.15-17

-do- pp.39

-do- p.57

-do- pp. 149-157

A.G's opinion 19-4-1942.

R.D.file 1492/28 Part IIIp.309

handed over to the society would be sold to him by Government soon after the termination of War as they were no longer required by the military authorities and that the cost of the lands would be the cost involved in the resumption of the Lands, handed over to the society, from the society plus price of the Government lands referred to above. The terms of the grant would be subject to such conditions regarding development as Government may deem it necessary to enforce. In reply Sir Cowasjee Jehangir informed Government on 13th May 1942 that he would not object to reasonable conditions being imposed but that he was unable to agree to the sale of the land to him subject to such conditions regarding development as Government may deem it necessary to impose. The Secretary to Government forwarded to Sir Cowasjee Jehangir a copy of the draft agreement containing building conditions attached to the lands proposed to be sold to him and requested him to state whether those conditions were acceptable to him. Sir Cowasjee proposed certain modifications of the conditions and the Secretary to Government in R.D. informed Sir Cowasjee Jehangir, on 3rd March 1944, conveying the decision of Government on the modifications proposed by him in the draft agreement containing building conditions to be attached to the lands in question. By his letter, dated 27th June 1945, Sir Cowasjee Jehangir informed the Government of Bombay that the modifications of the conditions proposed by Government were acceptable to him and requested Government to issue final orders regarding the sale of Government lands bearing survey Nos.23/1-B and 236A and the strip of land under the old road and after some time the Collector of Poona wrote to Government enquiring whether it was necessary to execute an agreement as Government had already decided to sell the lands acquired for the society to Sir Cowasjee Jehangir. The Collector was then informed that the society had already executed an agreement in September 1940

R.D.File 1492/28 Pt.II p.241

-do- p.252

-do- p.253

-do- p.261

-do- p.269

R.D.File 1492/48 Part IV p.77

-do- p.83

and all that was necessary was a deed of relinquishment by the

-do- p.99 society itself. The Collector of Poona reported that Sir Cowasjee Jehangir representing the society was unwilling to relinquish the lands formally in favour of Government. Shortly thereafter Sir Cowasjee Jehangir wrote to Government requesting

-do- p.103 it... it to send his engrossment of the document for vesting the lands in Messrs. Cowasjee Jehangir & Co.Ltd.. Sir Cowasjee

pp.17-18 ante was informed that he should approach the Collector of Poona as relinquishment of the lands by the society had to be done simultaneously with the execution of the agreement vesting the lands in Messrs.Cowasjee Jehangir & Co.Ltd..

Relinquishment of the lands has not yet been completed nor has a document in favour of Sir Cowasjee Jehangir been

pp.17.18 ante executed. H.M. R.D. considers that it is very inequitable that land which was acquired for a public school should be given to a private person or company for private gain. Really speaking, if the land is not required for the public purpose for which it was acquired, it should go back to the original owners at the current market rate or should be used for another public purpose by Government. He desires to know whether the sale of the land to Sir Cowasjee Jehangir after it is relinquished by the Trust for the public school, is final or whether it can be cancelled or changed. The H.L.A. is requested to examine the legal implications involved in this case.

It is clear from the facts stated above that there was a definite proposal by the Secretary to Government, R.D., to Sir Cowasjee Jehangir to sell the lands for development and after certain correspondence Sir Cowasjee Jehangir

R.D.file 1492/ 28 Part III p.289 informed the Government that he accepted the offer subject all, terms and conditions imposed by Government. The Trustees of the Parsee Public School have not yet relinquished the lands as advised by the H.L.A. and the Advocate General, nor

has Government executed any deed purporting to grant Contd. (9)
the lands to Sir Cowasjee Jehangir. The question of specific performance
of the agreement performance will arise only when the Trustees
have relinquished the land etc. In the circumstances, the
main question for the consideration would be whether by
reason of the offer and acceptance any legally enforceable
agreement could be spelt out of the correspondence and a
suit for specific enforcement against Government would be
tenable after the lands are relinquished by the society.

Clause (a) of section 4 of the specific Relief Act,
1877, provides that except where it is herein other wise
expressly enacted nothing in this Act shall be deemed to give
any right or relief in respect of any agreement which is not
a contract. This provision implies that a suit can lie for
specific performance of any agreement which is a contract.
Under clause (g) of section 2 of the Indian Contract Act, 1872
an agreement enforceable by law is a contract. Except in
cases specified in section 25 it is not necessary that an
agreement to be enforceable should be in writing. Under
sub-clause(v) of clause (2) of section 17 of the Indian
Registration Act, 1908 an agreement for sale of a land need
not be registered. Reading these provisions together it is
clear that if an agreement can be spelt out of correspondence
between private parties in respect of the sale of land a suit
for specific enforcement of such agreement would lie. In the
present case no doubt an agreement can be spelt out of the
correspondence between the Secretary to Government, R.D., and
Sir Cowasjee Jehangir. But section 175(3) of the Government
of India Act, 1935, requires that all contracts and
assurances of property made in the exercise of the executive
authority of the Province, to be valid, must be expressed to
be made by the Governor of the Province and should be executed
on behalf of the Governor by such persons and in such manner
as he may direct or authorise. These provisions were considered
by the Advocate General from time to time. In his opinion No.3

File of A.G's opinion slip C

dated the 17th January 1938, he observed "Government resolution authorises the grant of the site and states that Government do not consider any rent should be charged to the Municipality. This resolution cannot be said to be a deed or grant conferring an exemption from assessment or a contract with the municipality by which the Government have agreed not to charge assessment. Even if the Resolution were construed as a grant it cannot have any legal effect for the formalities laid down by the section 3 of 22 and 23 Vic.C.41 have not been complied with.

Those statutory formalities not having been observed the disposition by way of grant, if any, or the contract, if any, contained in the Resolution would be invalid in law and not binding on the Crown. (See 29 Bom. 599 at pages 605/606 and the recent decision of the Bombay High Court in the Secretary of state V. Bhagwandas Gordhandas.)" In this opinion No.44, dated 15th October 1938, he opined that unless a document is executed, there will be no valid disposition by way of grant or otherwise binding on the Crown. (See section 175(3) of the Government of India Act, 1935, and section 30 of the Government of India Act, 1919 and also the cases referred to in his opinion No. 3 of 1938). In his opinion No.26, dated 9th April 1939, the Advocate General stated "A further and greater difficulty is created by the terms of section 175(3) of the Government of India Act. That section is in terms stronger than section 30 of the Government of India Act, 1915 which was interpreted in 40 Bom. L.R. 19. Section 175(3) requires omitting the unnecessary words that all contracts made in the exercise of the executive authority of a Province shall be expressed to be made by the Governor of the Province and that all such contracts shall be executed on behalf of the Governor by such persons and in such manner as he may direct or authorise. It is not possible to find from the correspondence any contract which has been

-do- slip D

File of A.G's opinion slip B p.21

expressed to be made by the Governor of the Province. The conclusion, therefore, is that there is no contract in law between the Government and the lessee. In the case with reference to which that opinion was given by the Advocate General there was no concluded contract between the Government and the lessee. In the case considered by the Advocate General in his opinion No.8, dated 1st March 1940, vide slip Ap. 5 the facts were: The agreement signed by the licensee constituted an offer made by him to Government. That offer was accepted by Government by their resolution, dated the 29th November 1938. This acceptance was communicated to the Architects of the licensee by the letter of the Collector of Bombay, dated 2nd December 1938. The Advocate General opined : "It is clear that in law this did not give rise to a valid contract between the licensee and the Government. There is no contract expressed to be made by the Governor nor is there a contract executed on behalf of the Governor as required by section 175(3) of the Government of India Act, 1935."

It is clear from the aforesaid opinion of the Advocate General that the contract to be valid must be expressed to be made by the Governor and executed on behalf of the Governor by an authority duly appointed for the purposes. In the present case, the correspondence does not disclose that the offer and acceptance was made on behalf of the Governor nor is there a contract executed on his behalf as required by section 175(3) of the Government of India Act, 1935. In the circumstances, it appears, that there is no enforceable contract between the Government and Sir Cowasjee Jehangir and no suit can lie against Government for enforcing the contract for sale. As the question is of great importance, the Advocate General, Bombay, is requested to favour Government with his opinion in the matter.

S/- P M Ind 14/11.
Sabramanyam
Secretary of Legal Affairs.

No. 5 of 1948.

Advocate General's Chambers,
High Court,
Bombay, 5th January 1948.

U.O.C. to the Advocate General of Bombay,
No. 10035 dated 15th November 1947

Opinion.

Sec. 175 of the Government of India Act requires that all contracts shall be expressed to be made in the name of the Governor General or the Governor of the Province, as the case may be. Any contract, therefore, in order to be enforceable against Government must be so expressed to be made and must strictly comply with the statutory provisions It is not necessary that such contract should be contained in a formal document, and may be contained in correspondence. But even so, a contract to be effective, must comply with the terms of the section.

So far as I can see from the files, no such contract can be spelt out for the sale of the land in question to Sir Cowasji Jehangir. Accordingly it is open to Government to refuse to grant the land to Sir Cowasji Jehangir, without the approbation of any legal proceedings by him. I agree with the arguments and conclusion contained the A.L.A's statement of the case.

sd/- C.K. Daphtary.

Advocate General.

MM
50 dated 22-5-'50.

Office of the R.L.A.

A copy of the opinion of the Advocate General, Bombay and the Statement of the Case with which he agrees are forwarded herewith.

sd/- P.M. Lad
9.1.1948

Remembrancer of Legal Affairs.

R.O.R. to R.D.No. 315 dated the 10th January

~~See also R.D.No.72 Genl, dated 6-2-41~~

[redacted]

SC dated 22-6-'50.

Office of the R.L.A.

Resumption of land acquired under the Land Acquisition Act, 1894 for Parsi Public School Society.

The questions raised for the consideration of the Remembrancer of Legal Affairs have not been clearly stated by the Revenue Department. It is, however, presumed that the R.L.A. is requested to opine on the following two questions:-

1. Whether there is any legal objection to Government resuming the land under clause (6) of the Agreement, executed by the Parsi Public School Society under section 41 of the Land Acquisition Act, 1894.

2. Whether resumption of the land by Government or relinquishment of the land by the Parsi Public School Society would be proper.

2. It appears that the constitution of the Parsi Public School Society contains no provision enabling it to relinquish lands in favour of Government. Sir Cowasji Jehangir does not appear to be prepared to take steps to obtain the sanction of the Court to relinquish lands in favour of Government unless the documents vesting the said lands in Messrs. Cowasji Jehangir & Co. are also sent to him for execution simultaneously with the Deed to be executed for relinquishing the land in favour of Government. It is therefore clear that relinquishment of the land by the Parsi Public School Society whether with or without the sanction of Court is not practicable.

Government can enforce its rights under the Agreements executed between Government and the Parsi Public School Society. Under clause 4(2) of the agreements, the Society is bound to undertake the work of construction of the buildings within two years and to complete the same within 4 years from the date of application. Clause 6 empowers Government to resume the land in the event of the breach of any of the conditions including that specified in clause 4(2)

after giving a reasonable opportunity to the Society of making good the breach or breaches. The land was acquired and possession was handed over to the Society by Government long before 1942. Since then the Society did not undertake the work of construction of the buildings within two years nor did it complete the same within 4 years from the date of acquisition. Evidently, therefore, there has been a breach of clause 4(2) of the agreements and it will be competent for Government to resume the land after giving a reasonable opportunity to the Society to make good the breach. Government may therefore give a notice to the Parsi Public School Society specifying the breach under clause 4(2) of the agreements and calling upon it to make good that breach within a reasonable time failing which the lands could be resumed. On resumption, Government will have to pay the Society compensation equal to the amounts spent by the Society on the land or its value at the time of resumption whichever is less.

58/-P M LRO 9/2
Remembrancer of Legal Affairs.

U.O.to R.D., No. 72 Confl. dated the 9th February 1948

MJ

SC 22-5-'56.

Office of the R.L.A.

The true legal position in this matter has been explained in the opinion of the Advocate General dated the 5th January 1948 and the R.L.A's opinion dated the 9th February 1948. If the land is resumed under clause 6 of the Agreement for the breach of clause, 4(2), Government would be liable to pay to the Society as compensation the amounts spent by the Society on the land or its value at the time of resumption, whichever is less, but excluding the cost or value of any structure standing thereon. Before resuming the land, reasonable opportunity has to be given to the Society for making good the breach. Government have already communicated to Sir Cowasjee Jehangir their decision to resume the land. It is, therefore, a matter of administrative policy for Government to consider whether the land should be resumed under the provisions of the Agreement as already intimated to Sir Cowasjee Jehangir or whether a deed of relinquishment should be obtained from him upon the terms suggested by the Secretary, R.D., as a matter of equitable compromise. No question of law arises on which the R.L.A. can give any useful advice.

Sd/- P M L
Remembrancer of Legal Affairs.

U.R. to R.D. No. 157-Confl dated the 13th April 1948.

SC dated 22-5-'56.

Office of the R.L.A.

Land Acquisition Act, 1894. Amendment of preliminary notification issued under section 4(

3688 and returned.

The view expressed in R.D. office note dated 31-10-1947 is correct. (Cf. R.L.A's opinion No.7051 dated 17-6-1947 and 5053 dated 17-6-47). It would not be legally feasible to amend the notification of 1943 issued under section 4 of the Land Acquisition Act, 1894. If the land is needed for the Company the notification of 1943 will have to be cancelled and a fresh notification under section 4 will have to be issued and the Company will have to pay compensation on the basis of the present market value of the land.

Sd/- P M [illegible]
2814
Remembrancer of Legal Affairs.

R.N. to G.O. No. 4144, dated the 29th April 1948.

Issued

G.S.P.
29/4

MI.

SO dated 29-5-48

Temporary letting of Acquired land.

Land Acquisition Act, 1894.

Office of the R.L.A.

It is not clear from the papers forwarded to L.D. whether the Wagle estate has been taken possession of by Government either under section 16 or under section 17(1) of the Land Acquisition Act, 1894. If such possession has been taken, there would be no legal objection to allowing the bungalow in the estate to be used temporarily by the Veterinary Department.

Sd/- P.M. 1847
29/4

Remembrancer of Legal Affairs.

D.O. to Milk Commissioner No. 4207, dated 30th April'48.

Issued Submitted for signature

C.S.P
30/4

MM
SC dated 23-5-'48.

Action of the R.L.A.

It appears that Government received a proposal from the Collector of Dharwar for the acquisition of Survey Nos. 35-1B, 41-1 to 11, 41-1-3D, 43-2-3A, 44-3-C measuring in all about 28 acres situated at Unkal, Taluka Hubli, District Dharwar for the construction of a building for the Polytechnic college at Hubli. It was proposed that the urgency clause should be applied to those lands. However, Government issued on 13th March 1948 a notification under section 4 of the Land Acquisition Act in respect of those lands and requested the Collector to submit a draft agreement under section 41 of the Land Acquisition Act so that Government might issue a notification, under section 6, applying the urgency clause. Instead of submitting the draft agreement, the Collector, it appears, sent to Government the agreement duly executed by himself and the Chairman, Karnatak Lingayat Education Society, Belgaum with a copy of the draft final notification under section 6. This agreement relates to 98 acres- 0 guntas in all which included the area of 28 acres already notified under section 4. On receipt of the agreement, Government issued on 31st March 1948 a notification under section 6 of the Land Acquisition Act in respect of 28 acres already notified under section 4 and on the same day, not only published the agreement executed between the parties in respect of the whole area of 94 acres -0 guntas but also published a notification under section 4 in respect of lands other than those notified under section 4 previously on 13th March 1948. The question raised for the consideration of the R.L.A. is whether the validity of the agreement already published can be impugned on the ground that it relates to 94-0 acres

...ntend of 28 acres notified under section 4 on 13-3-1968.

2. Under section 39 of the Land Acquisition Act, 1894, the provisions of sections 6 to 37 cannot be put in force unless with the previous consent of the Provincial Government or unless the Company shall have executed the agreement hereinafter mentioned. Section 40 provides :-

"(1) Such consent shall not be given unless the Provincial Government is satisfied either on the report of the Collector under section 5A(2) or by an inquiry held as hereinafter provided -

(a) that the purpose of the acquisition is to obtain land for the erection of dwelling houses etc., or

(b) that such acquisition is needed for construction of some work and that such work is likely to prove useful to the public.

(2) Such inquiry shall be held by such officer and at such time and place as the Provincial Government shall appoint.

(3) Such officer may summon and enforce the attendance of witnesses and compel production of documents by the same means and as far as possible in the same manner as is provided by the Code of Civil Procedure in the case of a Civil Court."

...on 41 provides :-

If the Provincial Government is satisfied after ...nsidering the report, if any, of the Collector ...der section 5A(2) or on the report of the officer making an inquiry under section 40 that the purpose of the proposed acquisition is to obtain land for the erection of dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith or that the proposed acquisition is needed for the construction of a work and that such work is likely to prove useful to the public, they shall require the company to enter into an agreement etc."

Section 42 provided that every such agreement shall, as soo as may be after its execution, be published in the Official Gazette and shall thereupon, so far as regards the terms

on which the public shall be entitled to use the work have the same effect as if it had formed a part of this Act. Reading all these provisions together, it is clear that before a Company can be required to execute an agreement, it is essential that Government should satisfy itself that the land is needed for a public purpose and that such satisfaction should be based either on the report of the Collector under section 5A(2) or on the report of the officer appointed to make an inquiry under section 40. In the present case, there was no inquiry under section 5A(2) nor does it appear that there was any inquiry made by an officer appointed under section 40(2). The inquiry under section 40 is pre-requisite even in respect of acquisition of land by applying the emergency clause. Lands measuring 23 acres which were notified under section 4 on 13-3-1948 have been notified under section 6 by applying the Emergency clause; but under section 39, the provisions of sections 5 to 37 cannot be put in force unless with the previous consent of the Provincial Government which consent shall not be given under section 40 unless the Provincial Government is satisfied either on the report of the Collector under section 5A(2) or by an inquiry held as provided therein. By applying the Emergency clause, the inquiry under section 5A is eliminated. But such elimination would not dispense with the inquiry provided for in section 40(2). Since there was no such inquiry in respect of 28 acres of land, it appears that the notification issued under section 6 in respect of these lands would be in contravention of section 39. In respect of the other lands which are now notified under section 4 on 31-3-1948, the Collector has been directed by Government to submit his report under section 5A. This presumes that no inquiry under section 40(2) has be

hold in respect of these lands. It is therefore clear that the agreement taken from the Karnatak Lingayat Education Society in respect of the lands is in contravention of section 41. To regularise the position, it appears necessary that Government should first order an inquiry under section 40(2) in respect of lands notified under sections 4 and 6 and on receipt of the report of such inquiry, if Government is satisfied that the lands are needed for public purpose, Government may take an agreement under section 41 and then re-notify those lands under section 6 after applying the Emergency clause. In respect of the other lands, Government may await the report of the inquiry under section 54 and after receipt thereof, may consider the question of taking an agreement under section 41 separately.

Yours faithfully,

Commissioner of Legal Affairs.

U.O. to R.D., No. 8970 Dated 24th April 1948.

Issued

C S P
24/4.

MM

SC dated 23-5-1956.

Office of the A.L.A.

Acquisition of land in Cantonment area.

Land Acquisition Act, 1894 and Government of India Act, 1935, section 126

It appears that the Gujrati Kelvani Mitvardhak Mandal has requested Government to acquire for its purpose a plot of land comprising house No. 1983 in Convent Street in Poona Cantonment. The land in question is vested in the Central Government but is under the management of the Cantonment Board. The building thereon appears to belong to one Mr.D'Souza who has leased a portion of it to two tenants. Since the land vests in the Central Government, this Government has written to that Government in Defence Department requesting them to transfer the land to it. No reply has, however, so far been received by this Government. The question raised for the consideration of the A.L.A. is whether pending the transfer of the land by the Central Government to this Government, a notification under section 4 of the Land Acquisition Act, 1894, for the purpose of acquiring the building can be issued.

As decided by their Lordships in Secretary of State Vs. Satesh Chander Sen, 57, Indian Appeals p. 357, the land in a Cantonment is the property of Government and the houses erected theron are held by the owners as licencees of Government. Consequently the land in the present case is the property of the Central Government and vests in it for the purposes of the Government of the Dominion. It was held in Government of Bombay Vs. Esufalli, 12 Bom.L.R. p.34 that there could be no such thing as the compulsory acquisition of land owned by or in occupation and control of the Crown and the Land Acquisition Act cannot apply to such lands because all Crown lands

being vested in Government, they are competent and free to devote any of those lands to a public purpose and it would be a contradiction in terms to say that Government are compulsorily acquiring that which they have already acquired otherwise, both as to title or possession. The Land Acquisition Act does not contemplate the acquisition of things attached to the land without the land itself (see 35 Indian Cases 97). Since, however, the land in the present case vests in the Central Government, there would be no legal objection to acquiring the structures thereon under the Land Acquisition Act and it is immaterial whether it is the property of the Central Government or of the Provincial Government for the purposes of the Land Acquisition Act. Consequently there would ordinarily be no objection to issuing a notification under section 4 of the Land Acquisition Act for acquiring structures when the land beneath it vests in Government. However, the acquisition by the Bombay Government of building in the present case, when the land beneath it vests in the Central Government, appears to raise a constitutional difficulty. Under section 126 of the Government of India Act, 1935, the executive authority of every Province shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Dominion, and the executive authority of the Dominion shall extend to the giving of such directions to a Province as may appear to the Dominion Government to be necessary for that purpose. The buildings in a Cantonment are held by the owners as licencees and can be resumed by the Central Government on a month's notice and on payment of proper compensation whenever they are needed by Government for accommodation. The acquisition by a Provincial Government of buildings

in a Cantonment could undoubtedly interfere with the housing accommodation therein for the Central Government and as such, being prejudicial to exercise of the executive authority of the Central Government, would be hit by section 126(1) of the Government of India Act. Besides, unless the Central Government consent to transfe the

the land beneath the structure, the acquisition of the structure alone would be futile. It would, therefore, be advisable not to take steps for acquisition until the Central Government ha consented to the transfer of the land.

P M Lal
35/14
Secretary of Legal Affairs.

U.O. to R.D. No. 3087, dated 15th April 1948.

Subd. for signature.

121

SC dated 23-5-'50.

Office of the R.L.A.

Land Acquisition Act, 1894.

Application of urgency clause. Section 17(1).

The procedure followed by R.D. in making this reference to R.L.A. after issuing the notifications is not quite satisfactory. R.D. should in future make references to R.L.A. before issuing notifications.

The huts may be used as farm houses, but on that account the lands would not be arable lands within the meaning of section 17(1) of the Land Acquisition Act. It follows that the emergency clause should not have been applied to them.

The following procedure may satisfy the requirements of law :-

(1) to issue an erratum omitting the huts from the notification issued under section 6;

(2) to restore the huts to the owners if already evicted; and

(3) to rectify the huts under section 4(1) so that the owners may have an opportunity to raise objections if any to acquisition under section 5-A(1) within thirty days.

Sd/- P M [illegible]
4/5
Remembrancer of Legal Affairs.

D.R. to R.D. No. 4339 dated the 5th May 1948.

Issued S S P
5/5

SC dated 23-5-'56

Office of the R.L.A.

Acquisition of land in Poona Cantonment.

Land Acquisition Act, 1894

R.L.A's opinion No. 3687 dated 15-4-48.

In his last opinion No. 3687 dated the 15th April 1948, the R.L.A., after considering the legal position about the acquisition of the land and the buildings thereon in the Cantonment, advised that it would be advisable not to take steps for acquisition until the Central Government had consented to the transfer of the land. However Secretary, Revenue Department appears to be of the view that while it would be prudent to err on the safer side and await the Government of India's assent before the issue of the notification under section 4; but it would not be illegal or incompetent for the Bombay Government to issue a Notification under section 4 in anticipation of the assent of the Government of India. The R.L.A. is requested to advise whether such issue of Notification under section 4 would be legally feasible.

2. Land within a cantonment or in occupation of the military department as a camping ground etc., cannot be acquired under the Land Acquisition Act because it is the property of Governmen This is manifest from the Privy Council decision in several appeals where it was held that Government position being that they were the owners of the site, it would have been manifestly idle for them to have proposed to acquire which was already their own and therefore, when they sought to put in force the provisions of the Land Acquisition Act they naturally requisition what was not their own but what they desire to acquire, namely the buildings and the land (See para 223/

of the Land Acquisition Manual, page 103 and para 37 of the same Manual at page 54). Attention is also invited to the form of Notification under section 4 of the Land Acquisition Act at page 37 of the Manual in respect of the acquisition of structures on cantonment lands, where it is stated as follows :-

> " Whereas the Government of India claims that the land on which the said structures stand, is the property of the Government of India held by the owners of the said structures on Cantonment tenure under which Government may resume the land at any time on giving one month's notice and paying the value of such structures thereon as may have been authorised to be erected;
>
> And whereas the Government of India has given such notice and the notice has expired and the Government of India claims that the land has been resumed by it and desires that the structures thereon and all rights of interest if any, existing in favour of private individuals in the said land may be acquired for a public purpose under the Provisions of the Land Acquisition Act, 1894;
>
> Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Land Acquisition Act, the Government of Bombay is pleased to notify that the structures on the said land specified in the schedule hereto appended together with all such rights and interests if any in the said land are likely to be needed for the purpose specified above etc. "

The notice proposed to be issued under section 4(1) of the Land Acquisition Act in the present case at page 153 ante relates to the acquisition not only of the structures on the cantonment land but also of the land itself. As stated above, the land is the property of the Central Government liable to be resumed on a month's notice. Such notice has not yet been given. If the land is also proposed to be notified for acquisition possibly the owner of the structure may challenge the legality of the acquisition without notice of resumption. Further the land being of the ownership of the Central Government it cannot legally be notified for acquisition under the Land Acquisition Act. As

pointed out in the N.L.A.'s opinion, unless the Central Government consents to transfer the land beneath the structure, the acquisition of the structure alone would be futile. It is therefore, apparent that the issue of a Notification under section 4(1) of the Land Acquisition Act at this stage may not be quite legal. The N.L.A.would therefore adhere to his opinion that Government would be well advised to stay its hands until the Government of India assents to the transfer of the land after resumption on a month's notice.

P.M. LAD.
615
Remembrancer of Legal Affairs.

U.R.to N.D. No. 4414 , dated the 7th May 1948.

With N.D. File No. 6003/45.

MJ

SC dated 23-5-1950.

Office of the R.L.A.

Amendment of section 41(5) of the Land Acquisition Act, 1894 discussed.

Before the land is finally notified for acquisition for a "company" an agreement under section 41 of the Land Acquisition Act, 1894, has got to be taken from it providing for certain matters (see section 39 of the Act). One of these is that the agreement should provide for "the terms on which the public shall be entitled to use the work" (please see clause (5) of section 41). Both the Government of Orissa and the Government of India are of opinion that the condition about the public being entitled to use the work stated in clause (5) of section 41 unduly restricts the discretion of Government and may affect the industrial development of the country as it is not possible to predicate the terms on which the public shall be entitled to use the works in every case except in the case of public utility concern. This view does not appear to be correct in as much as the matters to be provided under the section are not mandatory and the section does not lay down that the public shall necessarily be entitled to use the work in all cases of acquisition under the Act (cf. R.L.A's opinion No. 2460, dated 30-7-1927). Agreeing with this opinion the Advocate General, Bombay, in his opinion No.84, dated the 13th September 1927 observes :-

> "Section 41 provides that after the enquiry directed by section 40 the enquiring officer shall report to the local Government the result of such enquiry and if the local Government is satisfied that the proposed acquisition is needed for the construction of a work and that such work is likely to prove useful to the public it shall require the company to enter into an agreement with the Secretary of State providing to the satisfaction of the local Government for the several matters set forth in the section.
>
> Section 41 makes the Government the sole judge of the manner in which the public are to have the use of the land taken up. See Ezra

Vs. Secretary of State, 30 Cal.p.36.

I do not think section 41 lays down that the public shall necessarily be entitled to use the work whenever land is acquired under the Act for companies. If the local Government is satisfied that the acquisition is needed for the construction of some work and that such work is likely to prove useful to the public then Government is to call upon the Company to inter into an agreement and if in the opinion of Government the work though likely to prove useful to the public is not to be used by the public the agreement is not to provide for the matter in which the public are to have use of the land taken up. ~~I think clause 5 of of the land taken up~~. I think clause 5 of section 41 is to be read as follows :-

'the terms (if any) on which the public shall be entitled to use the work'.

It may be argued that it is necessary that the public utility should be such that Government can prescribe the terms on which the public may use the work. But if that was so there would be no acquisition in cases when a work is likely to prove useful to the public but is such that it cannot be used by the public".

In view of these opinions with which I concur, no amendment of section 41 would be necessary.

Sd/- P M Lal, 4/5
Remembrancer of Legal Affairs.

U.R. to R.D. No.4311 dated 4th May, 1948 MM dated 23-5-'56. SC.

Office of the S.L.A.

Acquisition of land by the Society for Government. Payment of cost of acquisition to the Society by Government. Land Acquisition Act, 1894. Sections 41 50(1)

It appears that lands have been notified under section 4 of the Land Acquisition Act for acquiring on behalf of the Ahmedabad Education Society, Ahmedabad, for the purposes of a University, Engineering College building etc. The Engineering College at Ahmedabad is to be established by Government. The work of construction of the building and provision of equipment has been entrusted to Seth Kasturbhai Lalbhai who has promised a donation of half the cost of the building and the equipment. A provision of Rs.10 lacs for the acquisition of land for the College has been included in the current year's budget. Clause 7 of the agreement executed by the Ahmedabad Education Society provide es that if at any time or times whole or any part of the said land is required by the Government or for the purpose of making any new public road or for any purpose connected with public health, education, safety, utility, necessity or any other public purpose the Society on being thereto required by Government in writing, shall transfer to the Government etc. on payment of a sum equal to the amount of compensation etc. Government therefore proposes to proceed with the acquisition so that after acquisition, the lands required for the construction of the Engineering College building might be taken from the Ahmedabad Education Society under clause 7 of the Agreement. It appears that the Ahmedabad Education Society has to deposit Rs.14 lacs with Government as cost of acquisition. Revenue Department proposes that since Government has made provision of Rs. 10 lacs, this amount may be paid to the Society immediately providing for an additional amount of Rs.4 lacs to be paid so that the Society can deposit the sum of Rs.14 lacs as directed by the Special Land Acquisition Officer. The Joint Secretary

education Department however observes;

" The requirement as to deposit should be really as a safeguard. I do not see why the acquisition should not proceed in respect of the land required for Government - (though nominally all the acquisition will be in the name of the Society) and payments made as and when claims come through. If this is impossible then the proposal made by R.D. office will have to be accepted."

The papers are shown to the G.L.A. for opinion.

3. In his opinion No.3051, dated the 17th May 1947, the G.L.A. opined that if the declaration says that the land is required for a company, whereas in fact it is admittedly required in substantial part by Government for public purposes the declaration would not be conclusive of what is stated. Since, however, Government has decided to proceed with the acquisition of the lands for the Engineering College, the question about the validity of the declaration made under section 6 need not be pressed. The main point now raised is whether Government should make payments for the acquisition of lands directly to the owners thereof as and when their claims are settled under the Land Acquisition Act or whether those payments should be made through the Ahmedabad Education Society. Section 50(1) of the Land Acquisition Act, 1894, provides that where the provisions of this Act are to be enforced for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any company, the charges of or incidental to such acquisition shall be defrayed from or by such fund or company. Admittedly the lands in the present case are proposed to be required for the Ahmedabad Education Society and the notifications both under sections 4 and 6 have been so issued. Consequently, to be consistent with those provisions, it would be necessary that the cost of acquisition must be met from the funds of the Ahmedabad Education Society. It would not, therefore, be legal for Government to pay the cost of acquisition direct to the land owners as and when their claims are settled; for such

payment would be construed as an admission on the part of Government of having acquired lands for the public purpose and not for the Ahmedabad Education Society's purposes. Government should, therefore, pay in the first instance the amount to the Ahmedabad Education Society and ask the Society to deposit the amount under section 31, so that the charges of acquisition can be said to have been defrayed out of the Society's funds.

P M Lad
4/5

Remembrancer of Legal Affairs.

U.R. to D.D., No., 201-Coml. dated the 5th May 1950.

MM

SC dated 23-5-'50

Legal Department.
R.I.No. 6589 D/- 13-8-48.

Subd.

Please see R.L.A.'s opinion No. 5975 dated 24-4-48. R.D. wants to know whether action proposed in that department note at p. 137 ante is proper. It is now proposed to cancel the R.D. Notfn. No.7150/45, ~~p.107 ante~~ dated the 31st March 1948, issued under sec.6 of the Land Acq. Act, 1894, in respect of 28 acres of land and also R.D.Notfn. No. 7150/45, ~~p.107~~ dated 31-3-1948 publishing the agreement executed by the Collr. and the Chairman of the Karnatak Lingayat Education Society, Belgaum in respect of 99 acres-0 guntas (pl. see p.141 ante). It is also proposed to call from the Collr. a report under sec. 5-A, a draft notfn. under sec.6 and a draft agreement under sec.41 in respect of all the 28 a-res- 0 guntas of land (pl. see para 2 of the letter a/p. 139 ante). This removes the legal objection in respect of 28 acres of land where no inquiry was held and the final agreement in respect of /all lands will be taken only on receipt of a report under sec. 5-A. The action proposed by R.D. would be in accordance with the view expressed in R.L.A's opinion No. 5975, dated 24-4-1948 and therefore would be in order. The papers may be N'seen and returned".

Sd/-P.S.Nilkarni
MS-

A.L.R.Sd/-R.T.K.
MS-

Reply A-A

L.O.R.WR-D.No.4963 dt-24-5-1948

R.L.A. P M [illegible]
MS

[illegible]

SC dated 13-8-48

Draft reply.

Office of the R.L.A.

It appears that the agreement proposed to be taken from the Ahmedabad Education Society under section 41 of the Land Acquisition Act, 1894 relates to three categories of lands -

(1) lands which are notified for acquisition under Section 4 and an inquiry is held under section 5A;

(2) lands in respect of which the Emergency Clause is proposed to be applied; and

(3) lands which will be notified under section 4 for acquisition.

The question raised for the consideration of the R.L.A. is whether there is any objection to taking one agreement from the Ahmedabad Education Society in respect of all these three categories of lands and published.

2. An agreement can be taken under section 41 of the Land Acquisition Act, if the Provincial Government is satisfied after considering the report, if any, of the Collector under Section 5A(2) or on the report of the ~~Collector~~ officer making an inquiry under section 40 that the purpose of the proposed acquisition is to obtain land for the erection of ~~w~~ dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith or that the proposed acquisition is needed for the construction of a work and that such work is likely to prove useful to the public. Under section 40(1), the consent of the Provincial Government to put the provisions of sections 6 to 37 in force shall not be given unless the Provincial Government be satisfied either on the report of the Collector under section 5A(2) or by an inquiry held as hereinafter provided -

(a) that the purpose of the acquisition is to obtain land for the erection of dwelling houses for workmen

(b) that such acquisition is needed for the construction of some work and that such work is likely to prove useful to the public.

Sub-section (2) provides that such inquiry shall be held by such officer and at such time and place as the Provincial Government shall appoint. It is therefore apparent that in cases where no inquiry is held under section 5A, a report of the Officer under section 40 would be a pre-requisite to put the provisions of sections 6 to 37 in force and such report will have to be submitted by such officer after holding an inquiry at such time and place as the Government shall appoint. Although the inquiry under section 40(2) need not be a detailed inquiry as provided in section 5A, it appears necessary that there should be some formal inquiry and the time and place of such inquiry will have to be notified so that the public may have an opportunity to express their view. In the present case, it appears that in respect of the lands falling under category (1) there can be no difficulty, for an inquiry under section 5A is already held. But there being no inquiry under section 5A in respect of lands falling under categories (2) and (3), an inquiry under section 40(2) would be necessary. The Special Land Acquisition Officer has submitted his report to Government which is at pages 335 to 342 ante. It does not appear that the Special Land Acquisition Officer was appointed to hold the enquiry under section 40(2), at a particular time and a particular place. If so, the report made by the Special Land Acquisition Office cannot take the place of an inquiry which from the provisions of section 40 is expected to be of a formal character, and it is upon such inquiry that the

satisfaction of the Provincial Government is to be based. Consequently, it appears necessary that Government should order an inquiry to be held under section 40(2), and if on the report of such inquiry, Government is satisfied that the land is needed for a public purpose, there would be no legal objection to taking one agreement in respect of these lands under section 41.

P M Lal.

Remembrancer of Legal Affairs.

U.R.to R.D., No. 173-Confl. D/-23rd April 1948

50 dated 23-5-'50.

Office of the R.L.A.

Grant of copy of Report under section 5A.

Land-- Acquisition Act, 1894.

R.L.A's opinion No.5746, dated the 19-8-1940.

As pointed out in R.L.A's opinion No.5746, dated the 19th August 1940 the custodian of a public document is bound to give a copy of the document to a person having the right to inspect the same; but the right of inspection is excluded from all such documents as the Government has a right to refuse to show on the ground of state policy, privileged communication etc. The Report of the Collector under section 5A of the Land Acquisition Act, 1894 is a communication made in the official confidence and its disclosure may be prejudicial to public interest. Mr. Pandya is not therefore entitled in law to claim inspection and consequently to demand a certified copy of that report.

P M [illegible]
Remembrancer of Legal Affairs.

U.O. to R.D. No.5122, dated 31st May 1946.

Subd. for signature.

MM

50 dated 23-6-'56.

Office of the R.L.A.

Regarding invalid land acquisition proceedings

Land Acquisition Act 1894.

The legal position has been very clearly stated in the two opinions given by the R.L.A. (No.10617 dated 6-11-1947 and No.13388 dated 23-12-1947). The practical inconveniences no doubt appears to be great. However, in cases where the matter is likely to be contested in courts, no other course seems feasible. If, however, the cases are not likely to be taken to court, it would seem unnecessary to reopen the proceedings which have already been carried to their conclusion. Even in cases like those of Rao Saheb Shah, there is nothing in the Land Acquisition Act to prevent Government from settling the claims of owners of property either by mutual amicable settlement or by arbitration. The individual cases may be examined and suitable action may be taken in the light of these remarks.

P M [illegible]
1115
Remembrancer of Legal Affairs.

U.R.to R.D., No. 4569 D/-12th May 1948.

MR

SC dated 23-5-'50.

Office of the R.L.A.

Re-garding invalid land acquisition proceedings.

Land Acquisition Act, 1894.

The attention of the Revenue Department is invited to the questions raised by Secretary, R.D. at page 194 ante for R.L.A's advice. R.L.A. was not then requested to examine the points raised in R.D. office note. The remark made by R.D. in para.10 of its office note at p. 197 ante is not, therefore, correct.

The draft letter at page 199 ante appears to be in order.

P M Lad. 11/6.

Remembrancer of Legal Affairs.

D.O. to R.D., No. 5475 dated the 11th June 1948

SC dated 23-6-'50.

Office of the R.L.A.

The questions for R.L.A's consideration are:-

(1) Whether for the purposes of section 9 of the Land Acquisition Act, 1894, the Central Government should be treated as a "person interested" within the meaning of section 3(b) and

(2) Whether in view of the provisions of the Land Acquisition (Bombay Amendment) Act, 1948, any solatium will have to be paid.

As regards the first question, prima facie a "person interested" is one who would be entitled to claim compensation on account of the acquisition of the land. The proprietor of the land from whom the land is proposed to be taken will be a "person interested". Where Government owns and is in undisputed possession of the entire interest in the land, the question of acquisition does not arise. Where, however, Government owns or holds partial interest only, the Act is applicable for acquiring outstanding interest. In Bejoy Kumar Addy v. Secretary of State (39 I.C. 869) the Calcutta High Court has held that in a case in which the claim of Government was disputed, the omission to include Government as a person interested and the value of interest claimed by Government was wrong and the award was remanded for rectification. In a later case, the Allahabad High Court (1934 All. 269) also held that when a dispute arises between the Government and a claimant on a question of title, it is open to the Collector to refer the matter to the Court; in other words, the Government would have to be treated as a "person interested" (vide p.58 of Land Acquisition by Om Prakash). The Central Government

intends to institute a suit against Western India Club for a declaration that the lease is void, and for its cancellation (vide p. 63 ante). In the meanwhile, presumably the proceedings under the Land Acquisition Act are to be continued. So long as this dispute exists, and as the Central Government has proprietary interest ~~in the land, the~~ ~~ob the lands the~~ Central Government may be treated as a person interested.

As regards the second question, the notifications issued under sections 4 and 6 of the Land Acquisition Act, 1894, do not provide that the acquisition is in respect of a~~n~~y housing ~~scheme~~ undertaken by Government. Section 3(2) of the Land Acquisition (Bombay Amendment) Act, 1948, provides that nothing in the section shall apply to any building. Consequently, solatium will have to be paid under section 23(2) of the Land Acquisition Act and, in any case, for the acquisition of the buildings.

P M [illegible]
15/5/48.
Remembrancer of Legal Affairs.

U.R.to R.D.No. 4703 dated the 17th May 1948.

MM

SC dated 25-5-'56.

Office of the R.L.A.

In Bombay City it is usual to examine title for sixty years, The title-deeds forwarded by Messrs. U.J. and Madan cover a period of hardly 10 years. Though this may not be feasible in case of mofussil property, it is necessary to examine title at least for 30 years commencing from a good root of title e.g. a Sale Deed. The following is an abstract of title as appearing from title deeds which have been produced :-

By a simple mortgage dated 13th August 1932 between Mohanraj Kesarimal and Manoraj Shivraj of the one part and Purshottam Lalji of the other part, the property then consisting of 288 Acres and 15-3/4 Ghunthas was mortgaged by the said Mohanraj Kesarimal and Manoraj Shivraj to the said Purshottam Lalji to secure the amount of loan due under a previous mortgage executed by Mohanraj Kesarimal and Shivraj Meghraj father of Manoraj Shivraj on the 11th June 1923. This mortgage-deed of 10th June 1923 has not been produced. The amount due under the mortgage dated 13th August 1932 was duly paid on 15th September 1939 and the receipt has been duly endorsed on the said mortgage-deed and registered. The next title-deed is a sale-deed dated 26th September 1939 between Mohanraj Kesarimal and Manorraj Shivraj of the one part and A.S.K.Iyengar of the other whereby the said property which then consisted of 284 Acres - 15 Gs. -0 was conveyed to the said A.S.K.Iyengar. This sale-Deed can be accepted as a root of title. In that case the title-deed produced covers a period of hardly ten years. By a Deed of Exchange dated the 17th April 1941 between Jesraj Kasturchand of the one part and the said A.S.K.Iyengar of the other part, the said A.S.K.Iyengar transferred to the said Jesraj Kasturchand a part of the said property admeasuring 1 Acre and 21-3/4 Ghunthas exchange for the adjoining piece of land belonging to Jesraj Kasturchand admeasuring 2 acres -1 3/4 Gs. By sale-deed

dated the 9th August 1943 between the said A.S.K.Iyengar of the one part and Prithviraj Kasturchand of the other part, the said Prithviraj Kasturchand Mutha transferred to the said A.S.K.Iyengar adjoining land admeasuring 2 Acres and 37½ Gunthas. It will thus be seen that A.S.K.Iyengar has acquired the land by three different lots and no evidence regarding the title of the predecessors in title is forthcoming in respect of any of the lots, acquired under the Deed of Exchange dated the 17th April 1941 and the Sale-Deed dated the 9th August 1943. By Conveyance dated the 26th September 1944 between the said A.S.K.Iyengar of the one part and Chimanlal Nathuram of the other part of the said property then consisting of 259 acres - 9½ Gs. was transferred by the said A.S.K.Iyengar to Chimanlal Nathuram. Simultaneously with this conveyance the said A.S.K.Iyengar has signed the declaration that the said property was his seprate and self-acquired property and that none of his sons nor any of his brothers had any claim to the said property. By Conveyance dated the 15th June 1945 between Chimanlal Nathuram of the one part and the Bombay Agricultural Company Ltd., of the other part, the said property admeasuring 259 acres - 9½ Gs. was transferred by the said Chimanlal Nathuram to Bombay Agricultural Co. along with the moveable property, fixtures and fittings set out in Schedule II to the said Conveyance. By Conveyance dated 16th day of June 1946 between the Bombay Agricultural Co. Ltd., of the one part ~~and Mrs. Hemlata K. Deshpande of the other part, the said property~~ and Mrs. Hemlata K. Deshpande of the other part, the said property comprising of 259 acres - 9½ Gs. was transferred to the said Mrs. Hemlata K. Deshpande at or for the price of ₹1,20000/-. By Deed of Mortgage dated the 2nd January 1947 between Mrs. Hemlata K. Deshpande of the first part and Vasantrao Deshpande as confirming party of the second part and Motubhai Ishwarbhai, Jamnadas Motubhai and Jasvantlal Motubhai, the clients of

Messrs. M.J. and Madan of the third part, in consideration of the sum of Rs 60,000/- ~~is~~ advanced by the clients of Messrs M.J. and Madan to her the said Mrs. Hemlata K. Deshpande granted and conveyed the said property then admeasuring 269 acres- 9½ Gs. to the clients of Messrs. Matubhai Jamietram and Madan subject to the proviso for redemption therein contained.

5. From the above abstract it will be clear that there have been several intervening Hindu vendors and except in case of Mr. Iyengar who has made a declaration that it is his separate and self acquired property, there is no evidence to show the nature of the property in the hands of these vendors. It is possible to have the mortgage in favour of the clients of Messrs. M.J. & Madan paid off at or before the completion of the sale; but for the purpose of ascertaining whether Mrs. Deshpande can make out a marketable title free from reasonable doubts, it will also be necessary to invite claims by a public notice, to have the tenure and discription of the property checked by the Collector and to call for extracts from the records of the Sub-Registrar of Dahanu for a period of at least 20 years. It will also be necessary to call upon Mrs. Deshpande to answer requisitions particularly regarding the nature of property in the hands of the said intervening Hindu vendors, and Government will, in that case, have to rely mostly on the information furnished by Mrs. Deshpande for ascertaining whether her title is marketable. All this investigation will involve considerable delay.

If Government agrees to purchase the property by private negotiations, it will be subject to the same disabilities of a private purchaser who is bound to make all the enquiries and satisfy himself that the title is marketable and free from reasonable doubts. From the

title deeds produced, it cannot be said that the title is free from reasonable doubts and it is not advisable for Government to run the risk of being pestered by persons claiming or alleging to claim outstanding interests in the property. In this connection, it seems necessary to draw the attention of A. and R.D.D. to the following paragraphs 14 and 15 of the Land Acquisition Manual which deal with the relative merits of acquisition of land under the provisions of the Land Acquisition Act and acquisition by private negotiations :-

14. "Though land may be acquired for Government by private negotiation, this should not be done without the knowledge of Collector and his consent. If this were omitted officers of other Departments might commit various mistakes as to tenure and title and also might pay prices so high as to embarrass other proceedings, or so low as to give rise to allegations of undue pressure or misapprehension."

15. "Government entirely discountenance acquisitions by private contract. When it is desired to acquire land, the land should be notified and the acquisition carried out under the Act. <u>This procedure shortens correspondence and negotiations, makes certain of the land and secures an indefeasible title.</u> The notification need not in any way prevent or impede private negotiations these can be proceeded with and, if agreement be arrived at, the price agreed can be awarded in the manner indicate in the preamble of R. 1171-08 and paid under the usual procedure (C.AC. Appx.7) (R.8702-08). If the price be not agreed upon by private negotiations still an award can be framed. In either case the land will be acquired and the title of Government will be secured, which will not be the case if the acquisition be made by private

Contd.

4. From the concluding portion of H.M.'s minute dated 22nd February 1948 at p. 37 of the A.R.D.D. file No. 1835/36017 it appears that the course of purchase by private negotiations was preferred to acquisition under the provisions of the Act on the ground that the acquisition price is likely to be higher than the price fixed by private negotiations. G.R., R.D.No. 1171 dated 11th February 1945 which prescribes the procedure in case of acquisition of land for public purposes and R.D.Circular No.1164/34 dated 14th October 1934, clearly lay down that proceedings under the Land Acquisition Act need not in any way prevent or impede private negotiations which can be proceeded with and if an agreement is arrived at, the agreed price can be awarded in the manner indicated in the preamble to G.R., R.D.No.1171. It seems, therefore, possible to secure indefeasible title by proceeding under the provisions of the Land Acquisition Act and at the same time to secure the benefit of the advantageous price of Rupees One by making it clear to Mrs. Deshpande that the agreed price lakh shall include the amount of solatium payable under section 23(2) of the Land Acquisition Act.

P M Lund
2/6
Remembrancer of Legal Affairs.

D.O. to A. & R.D.D. No. 834- Conf. D/-22nd June 1948.

MM

SC dated 25-6-48.

R.I.No. 184-Confl. dated 13-5-48.

L.D.

Submitted.

The facts of this case are as follows:

A.-Cs.

p. 67 ante S.No. 363 admeasuring 0-18 of village Wasna, Taluka Borsad, was ordered to be acquired for a public purpose viz. for a road, along with certain other Nos. in the year 1942. The lands were finally notified for acquisition in the year 1942 under sec. 6 of the Act with an urgency clause under Government Notification Nos. 8153/39, dated 17-9-1942 and 22-9-1942. Before the award was made possession was taken on 17-12-1942, and the award was declared by the District Deputy Collector, Anand on 16-11-

On 13-7-1944, i.e. before the award was de

Mr. Himatkhan Pathan, owner of the Survey number 363, informed the District Deputy Collector that there were four mango trees on the land intended to be acquired and that he should be paid compensation for the same. The District Deputy Collector, however, did not take notice of this claim probably because the claim was not included in the reply to the notice under sec.9 which was served on the applicant on 25-11-1943. Out of the four trees on the land, three have been cut down by the P.W.D. and it is now proposed that Mr. Pathan should be paid Rs.270 for the three trees cut down and that the fourth one should be allowed to remain in his possession. The payment of Rs.270/- is to be made privately and R.D. considers that there is no objection to such payment. However, E.L.A. is requested to advise (vide p.77 ant

Office of the R.L.A.

Compensation for trees on acquired land.

Land Acquisition Act, 1894.

There would be no legal objection to privately settling the claim for compensation in the present case.

P M Lnd.
1816.
Remembrancer of Legal Affairs.

F.1 to R.D., No. 315 Confl. dated the 19th June 1948.

ter

DC dated 25-6-'48.

Office of the S.L.A.

Payment of interest.

Land Acquisition Act, 1894-- Section 41.

Under section 41 of the Land Acquisition Act, 1894, the Provincial Government can require the company to ente into an agreement with the Provincial Government provid in to the satisfaction of the Provincial Government for the matters specified, one of which is payment to the Provin cial Government of the cost of the acquisition. In pursuance of this provision in the agreement entered into with the Ahmedabad Electricity Co. it is provided that:

"The Company shall pay to the Government the entire cost as determined by the Government of the acquisition of the said land including all compensation damages, costs, charges and other expenses whatsoever, which have been or may be paid or incurred in respect of or on account of such acquisition or in connection with any litigation arising out of such acquisition etc."

It is clear from this clause as well as the provisions of section 41 of the Land Acquisition Act, 1894 that the entire cost of acquisition is to be paid by the Company on whose behalf lands are beinga acquired. The term "cost of acquisition" is not defined in the Act and in the circumstances would have to be understood in its ordinary meaning as the actual cost incurred by Government in acquiring the land. The first award made by the Additional Special Land Acquisition Officer is a nullity as he was acting without jurisdiction and the revised award which will be made will be the proper award for the purposes of the Act. Under section 34 of the Act interest becomes payable from the date of possession till date of deposit or payment and as this liability for payment of interest is statutory charges on that account will have to be included in the cost of acquisition irres-

the fact that this additional cost was caused by the acti... taken by an officer in the belief that he was duly authorised so to do. In these circumstances there would be no legal objection to omit the reference to payment of interest by Government as proposed by the Revenue Secretary. Whether in fairness and equity the company should not be required to bear this additional burden is a matter of policy for Government in the administrative Department to decide.

P M Lal
Remembrancer of Legal Affairs.

U.R. to R.D. No. 343-Confl. dated the 28th June 1948.

Subd. for signature

MM

SC dated 25-8-'56.

No.L.A./136A

Old Custom House Yard, Fort,
Bombay, dt. the 22nd April 48.

Remembrancer of Legal Affairs,
Bombay.

Subject:-Land Acquisition (Bombay Amendment) Act, 1948.
Acquisition of lands for Housing Schemes.

The Land Acquisition(Bombay Amendment)Act, 1948 (Bombay Act No.IV of 1948) came into force on the 13th March 1948. Under section 3(ii) of this Act "relevant date" means the 1st day of January 1948. It is, therefore, not clear whether, for the purposes of valuation, the Act is to be taken to have come into force on the 13th March 1948 or the 1st January 1948.

2. Under section 3(1)(c)(ii) of this Act, the solatium of 15 per cent under section 23 sub-section (2) of the Land Acquisition Act 1894, is not payable in respect of lands notified for housing schemes. It is not clear whether the 15% per cent solatium would be payable in respect of acquisitions notified under section 4 of the Land Acquisition Act 1894, on dates earlier than the 1st January 1948 or the 13th March 1948 whichever may be held to be "relevant date" under section 2(ii) of this Act.

3. As the above points are not free from doubt, I would like to have your authoritative rulings on these issues.

~~1818~~
~~24-4-48.~~

Sd/-

Collector, Bombay Suburban District.

22-4-48.

RCH/22.4.

50 dated 25-5-'50.

No. 6315

Office of the
Remembrancer of Legal Affairs,

Bombay Castle, 6th July 1948.

To
The Collector,
Bombay Suburban District.

Subject:- Land Acquisition (Bombay Amendment) Act, 1948.
Acquisition of lands for Housing Schemes.

Sir,

With reference to your letter No. L.A.Q./136A, dated the 22nd April 1948, I have the honour to state as follows:-

The Assent of the Governor to the Land Acquisition (Bombay Amendment)Act, 1948 having been first published on 18th March 1948 in the Bombay Government Gazette, that Act would be deemed to have come into operation on 18th March 1948(see section 5 of the Bombay General Clauses Act, 1904); and it would apply to lands notified on 18th March 1948 and thereafter for the purpose of a housing scheme. For the purposes of valuation of lands notified for such scheme the relevant date would be 1st January 1948 and not 18th March 1948 on which date the Act came into operation (see clause first of section 23(1) of the Land Acquisition Act, 1894 as amended read with section 2(ii) of the Land Acquisition (Bombay Amendment) Act, 1948). The lands notified prior to 18th March 1948, even though they be for a housing scheme, would not be entitled to the benefit of the Land Acquisition (Bombay Amendment) Act, 1948 and they will have to be valued as other lands notified for any other public purpose and the solatium will have to be ~~other public purpose and the solat~~ paid to the owners thereof under section 23(2) of the Land ~~Aquisition Act, 1894.~~

~~Yours faithfully,~~

Acquisition Act, 1894.

yours faithfully,

Secretary

Remembrancer of Legal Affairs.

Subd. for signature.

[illegible]

SC dated 25-3-'50.

L.D.R.I.No.6369
dt. 15-5-48.

Submitted.

p.51 ante 2. By G.N.,R.D.No. S.112, dated 7th February 1945 R.D. issued a preliminary notification under sec/4 of the Land Acquisition Act, 1894 for acquisition of S.No. 347 measuring A. 1 and 6 Gunthas of village Mehalaj Taluka Matar in Kaira Dist. for a burial

p.65 ante ground for Muslims. By G.N.R.D.No. 2847/39/12006, dated 15th June 1946, this land was finally notified for acquisition under sec. 6 of the Act. The Collr. of

p.67 Kaira states that the original owner gifted the whole of the S.No. 347 measuring A. 1 G. to Messrs. Rahemotkhan Ijatkhan Pathan and Hajimiya Jiwamiya Malek, trustees of the property of Muslim Panch of Mehlaj, on 18-6-1947 and the Trustees have transferred this land as gift to Govt. by a registered document dated 28-6-1947 for the use of grave yard for the Muslims. He therefore states that as Government have sec red possession of the land, acquisition proceedings may

p.66 ante be with-drawn. The Commr. N.D. is of the view that as the gift of the land is conditional subject to the donor's rights over the trees standing thereon, it would be better to complete the formal acquisition which would make the land free from all private rights and incumbrances; and that the donor need not accept the com pensation if he really wished to make the gift of the land. The R.L.A. is requested to advise whether the course proposed by the Commr. should be adopted.

MM

SC dated 25-5-'50

Office of the R.L.A.

Continuance of acquisition proceedings though the land is gifted to Government to secure indefeasible title over trees.

Land Acquisition Act, 1894.
Section 3(a).

The Commissioner's proposal at page 68 ante may be accepted and compensation in respect of trees may be awarded to the owner.

Sd/- P M Lad.
1417
Remembrancer of Legal Affairs.

U.R. to R.D. No 6025. dated the 15th July 1948.

SC dt. 25-6-'56.

Office of the R.L.A.

The Land Acquisition Act, 1894.

Sections 17(1) and 48(1).

For the purposes of section 17(1) of the Land Acquisition Act, 1894 what is material is not whether the land is used for agriculture and whether agricultural assessment is not altered but whether the land is waste or arable. Consequently the fact that the area under the huts has not been separately demarcated and is not subject to non-agricultural assessment is immaterial so long as the land is not waste or arable.

It would certainly be desirable to withdraw the land under the huts from acquisition under section 48(1) when possesion has not been taken; but in that event Government will have to pay compensation to the owners of huts as damages although such compensation in the present case would be nominal. It is however for R.D. to decide which course would be more convenient and expedient. After deciding that R.D. may return the file to L.D. for scrutiny of the relevant draft notifications if necessary.

Sd/- P.M.Nair
29/7

Remembrancer of Legal Affairs.

U.R. to R.D. No.7114 dated the 29th July 1948.

Submitted for signature.

MM

SC dated 25-5-'50.

No. 7205
Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 21st July 1948.

To

The Collector of Bombay Suburban District,
Bombay.

Subject :- Acquisition of land for the Aerodrome at Santa Cruz.
Case No. L.A.Q./51/K/204 of Mole-Kalyan village.

Sir,

With reference to your endorsement No. L.A.Q./51/K/204/600, dated the 15th July 1948, forwarding the letter from the Special Land Acquisition Officer, Bombay City and Bombay Suburban District No. L.A.Q./51/K/204/573, dated the 12th July 1948, on the above subject, I have the honour to observe as follows :-

The contention of the Solicitors of Mr. Alibhai is correct. The notice under section 12(2) of the Land Acquisition Act, 1894 requires to be served on the person interested in the manner prescribed by section 45. Since Mr. Alibhai's Mehtaji was not an adult male member of his family, the service of notice on Mehtaji cannot be considered proper service on Mr. Alibhai under section 45. It will have therefore to be treated that there was no notice given to Mr. Alibhai under section 12(2) in which case the latter part of the proviso (b) to section 18(2) will apply and the period for making the application will be six months from the date of the Collector's award.

Sd/- P M Lad
30/7

Remembrancer of Legal Affairs.

Copy forwarded with compliments to the Special Land Acquisition Officer, Bombay City and Bombay Suburban District.

Office of the B.L.A.

Question whether execution of agreement under section 41 is necessary when land is to be acquired for the Tata Hydro Electric Power Supply Co. Ltd.
Land Acquisition Act, 1894 -s. 41-

Clause 1 of the agreement dated 7th July 1911 between the Secretary of State for India in Council and the Tata Hydro Electric Power supply Company, Ltd., executed under section 41 of the Land Acquisition Act, 1894, provides for acquiring lands from time to time whenever the Company shall apply in writing to the Government to put in force the provisions of the Land Acquisition Act for the purpose of acquiring for the Company any land needed for the construction of the said works in the said villages etc. The Tata Hydro-Electric Power Supply Company has now applied to Government for acquiring certain lands for extension of its staff quarters and contends that it is not necessary to execute a fresh agreement under section 41 of the Land Acquisition Act in view of clause 1 of the agreement of 1911. The question raised for the consideration of the B.L.A. is whether the fact that Government has agreed in clause 1 of the agreement to acquire lands from time to time whenever the Company shall apply in writing etc. means that Government is bound to acquire lands for the Company in the villages mentioned in the agreement without the Company executing a fresh agreement under section 41 of the Land Acquisition Act each time it applies to Government for acquiring land.

2. Clause 7 of the agreement provides that the construction of the said works on the said acquired land shall be completed by the company within five years from the date of these presents or within such further time as the said Government shall allow and the Company shall expend in the construction of the

said works not less than the sum of Rupees twenty lakhs. Clause 8 lays down that the Company shall at all times during the said period of five years or any such extension thereof as aforesaid permit the said Government or any officer or officers deputed by the said Government in that behalf to inspect all the said works etc. Reading these clauses with clause 1 of the agreement, it appears that the intention in providing in the agreements for power to acquire land for the Company from time to time was to avoid repeated execution of agreements for lands which might thereafter be needed for the completion of the said works. That agreement never intended to cover the acquisition of lands which would be needed after the completion of the said works. The period of five years provided in clause 7 expired long before and thereafter no further extension, it appears, was applied for nor was it granted by Government. The works which were proposed to be constructed by the Tata Hydro-Electric Power Supply Co. and for which the lands were needed to be acquired were completed, whereafter the agreement exhausted itself. It appears, therefore, that clause 1 of this agreement of 1911 cannot be relied upon to save the execution of a fresh agreement under section 41 of the Land Acquisition Act. It is true that a similar point was raised in 1933 and the Company relied upon clauses 5 and 8 to show that the five years was a limit for the construction of the main works and consequently that limit did not apply to the construction of subsidiary works. This contention of the Company was accepted by Government and acquisition of lands was done for

the Company without taking a fresh agreement; but at that time the B.L.A. was not consulted. In view of what is stated above regarding the interpretation of agreement, it appears that the contention of the Company is not tenable and a fresh agreement would be necessary. Further, it may also be cited that an agreement under section 41 of the Land Acquisition Act is required to be executed only after the Provincial Government is satisfied after considering the report, if any, of the Collector under section 54(2) or on the report of the officer making an inquiry under section 40 that the purpose of the proposed acquisition is to obtain land for the erection of dwelling houses for workmen etc. It is clear from these provisions that in respect of each acquisition of land Government has got to be first satisfied that the land is needed for a public purpose and thereafter Government can give its consent to acquire the land under section 39. Government must therefore hold an inquiry as provided in section 40, and if satisfied that the land is needed for a public purpose, may give its consent and require the Company to execute an agreement under section 41.

8. The second question for consideration is whether the purpose for staff and labour quarters can be said to have been covered by the agreement of 1911. As stated above, the agreement of 1911 cannot be relied upon for the purpose of acquiring land now needed by the Company for staff and labour quarters. Consequently, Government should follow the procedure as laid down in sections 39 and 40, and if it is satisfied that the land is needed for staff and labour quarters which purpose is in terms mentioned

in sections 40 and 41, an agreement under section 41 may be taken from the Company and the acquisition of the land proceeded with.

5/1 P M L
31/8
Remembrancer of Legal Affairs.

U.R. to R.D. No. 9303 dated 31st August 1948.

Subd. for signature.

SC dated 25-6-'50

Office of the R.L.A.

Question whether enquiry under section 5 A or 40(1) can be eliminated when applying urgency clause in acquisition clause in acquisition of land.

Land Acquisition Act - Sections 5 A, 6, 17, 30, 40 and 41.

Under section 17(4) of the land Acquistion Act, 1894 Government may, in cases where the emergency clause is to be applied, direct that section 5A shall not apply and a declaration under section 6 may be made. Section 30 provides that the provisions of sections 6 to 37 shall not be put in force in order to acquire land for any company unless with the previous consent of Government or unless the company shall have executed the agreement hereinafter mentioned. Under section 40(1) consent of Government can be given either on the report of the Collector under section 5A(2) or by an enquiry held as provided therein. Section 41 provides for taking an agreement if Government is satisfied after considering the report under section 5 A(2) or on the report of the officer making an inquiry under section 40 etc.

Reading these provisions together it is apparent that even in cases where the emergency clause is to be applied what is absolutely necessary is at least an inquiry under section 40(1) if the report under section 5A is to be eliminated and the execution of an agreement whereafter a declaration can be made under section 6.

Sd/ P M Lad.
31/5

Remembrancer of Legal Affairs.

U.O. to R. and H.D. No. 8981 dated the 1st September 1954

MM

SC dated 25-8-'54.

Office of the R.L.A.

In view of the position stated in Remembra___ of legal Affairs opinion No. 3067, dated 15-4-1948 and No. 4414, dated 7-5-1948 it would not be legally possible to acquire the land in the cantonment under the provisions of the Land Acquisition Act.

Sd/- P M [illegible].

16/9

Remembrancer of Legal Affairs.

U.O. to R.D. No.8040 dated the 17th September 1948

Subd. for signature,

[illegible]

5[illegible] dated 25-9-'50.

Office of the R.L.A.

In the opinions recorded by the R.L.A. so far in this case, a clear distinction has been made between the acquisition of the structure on the land together with all such rights and interests, if any, in the land and the acquisition of the land itself. 45 Bombay 277 is no authority for the proposition that the land, as distinguished from the superstructure and the rights and interests in the land, can be acquired even though it vests in the Government of India, without their consent. In fact what was notified for acquisition in 45 Bombay was the superstructure on the land together with all such rights, if any, over the site. See the notification at p.137 in 1913 R.D.File No. 1202 Pt.I. The references given in R.L.A's opinion No.4414 dated 7th May 1945 were further verified and it seems from G.R.P.W.D. No. 1951-Ry dated 13th October 1913 that even in the case of privately owned lands in cantonments it would be necessary, before applying the provisions of the Land Acquisition Act, to obtain the sanction of the Government of India in the Army Department. Moreover since 45 Bombay 277 was decided the constitutional position has changed in respect of the vesting of property in the Provincial and in the Central Governments. Under section 23(2) of the Government of India Act, 1919, all property acquired in pursuance of the Act was to vest in His Majesty for the purposes of the Government of India, and there seems to have been no division of property between the Central Government and the Provincial Government. Under the provisions of sections 174 and 175 of the Government of India Act, 1935, it appears that

there is now a division of property between the Central Government and the Provincial Government. See also section 127 and section 126(1) of the Government of India Act. It would seem from these provisions that without the consent of the Government of India it would not be possible to acquire "land" which vests in that Government. In fact the question of acquisition should not arise, because the same result can be achieved by transfer. For these reasons the R.T.A. advised that the notification should be confined to the acquisition of the superstructure and such rights and interests, if any, in the land which the party may have. The Government of India have made it quite clear that they are not prepared to transfer the land to the Government of Bombay. They are, however, agreeable to the Kolavari Mandal executing the lease for the land in favour of the Government of India. In these circumstances a notification for the acquisition of the limited interest of the kind described above should suffice. If R.D. agrees with this view, a draft notification may be submitted and will be scrutinised by the Additional Secretary.

Sd/- P M [illegible]
27/12
Superintendent of Legal Affairs

U.O. to R.D. No. 201009, dated the 23th December 1950

[illegible]

SO dated the 25-5-'51.

Legal Department.

Question whether the words "Prant Officer" can be used in notification under sections 4 and 6 Land Acquisition Act, 1894 - section 4 and 6

When the land is notified under section 4 of the Land Acquisition Act, 1894 certain officers are specially appointed to perform the functions of the Collector. 'Collector' as defined by clause (c) of section 3 means the Collector of a district and includes a Deputy Commissioner and any officer specially appointed by the Provincial Government to perform the functions of the Collector under that Act. By G.N., R.D.No. 1317/45, dated 16th July 1948, the District Deputy Collector, Chiplun Division, is appointed under clause (c) of section 3 to perform the functions of a Collector. Section 8 of the Bombay Land Revenue Code, 1879 empowers the Provincial Government to appoint in each district a Collector to exercise all the powers and discharge all the duties conferred and imposed on a Collector or an Assistant or Deputy Collector etc. Sections 9, 10 11 and 12 also refer to the Assistant Collector and the Deputy Collector. It is therefore clear that a reference to the District Deputy Collector will not be a reference to the Assistant Collector who even on administrative grounds is considered as a superior officer to the former. It is true that the Assistant or Deputy Collector is also called a Prant Officer. These officers are so called because they are in charge of a Prant (sub-Division) comprising one or more talukas in each district. But the expression "Prant Officer" is not a statutory expression and has not been used in the Bombay Land Revenue Code or the rules made thereunder. It would not therefore be legally correct to use the expression 'Prant Officer' in notifications issued under

/ Sections 4 and 6 of the Land Acquisition Act. The notification in the present case will therefore have to be amended by issue of an erratum as suggested by the Assistant Collector, Chiplun Division. But in future use -

such cases it will be desirable to use the expression "Assistant or Deputy Collector who may for the time being in charge of a .....division."

10/11

Additional Secretary to Government.

U.R. to R.D. No. 10572. dated the 10th November 1948.

Subd for signature.

MM

SC dated 25-5-'50.

The land in question 9 was acquired for the Bassein Municipality in 1928 for the purpose of constructing a building for the Marathi Girls' school. The Municipality was not able to construct the building. Under the Bombay Primary Education Act, 1923, the functions of the Municipality in regard to primary education were transferred to the School Board of the District Local Board and along with them the land in question was also transferred. The School Board has been also unable to use the land for the purpose for which it was acquired and the land has been lying vacant. It is reported that the land is now unsuitable for the location of a school and the District Local Board has passed a resolution requesting the Municipality to take over the possession of the land. The question for consideration is whether the Municipality will be competent to sell the land after taking it back from the School Board.

2. The land no doubt was acquired in 1913 for the purpose of the construction of a school. After its acquisition the land vested in the Municipality and under section 82 of the Bombay District Municipal Act, 1901, it vests in the Municipality, subject to the provisions of the Act and for the purposes thereof. Under section 60 of the said Act such land can be sold by the Municipality with the previous sanction of the Commissioner. The purpose for which the land was acquired has failed and for a period of ~~30 years the land acquired has failed and for~~ 25 years the Municipality has not been able to

(108/A)

use it for the said purpose. There is, therefore, no objection to permit the Municipality to sell it with the previous sanction of the Commissioner. Attention on this point is invited to the Advocate General's opinion dated 10th April 1943. The view taken in R.L.A's opinion No. 6330 dated 30th August 1943 does not apply to this case. As pointed out by Secretary, R.D. the acquisition proceedings in that case were not completed and the provisions of section 48 of the Land Acquisition Act, 1894 applied.

I&FTR.D.
O.O. 22/10

Additional Secretary to Government,
Legal Department.

U.O. to R.D.No. 0947, dated the 23rd October 1948.

Issued

Subd. after issue with an index card.

File to O. Leg./43.

22

24/11

121

35 dated 25-5-50.

Office of the R.L.A.

Land Acquisition Act.-- Acquisition of cantonment lands

The question of invalidation of the lease is under the consideration of the Government of India and this may affect the determination of compensation payable to the club of Western India, Poona. Since possession appears to have been already taken there would be no legal objection to postponing the award until the Government of India has decided the point about the invalidation of the lease.

A/ P.W.L. 28/10

Remembrancer of Legal Affairs

C.R. to R.D. No. 10143 dated the 28th October 19

Subd. for signature.

164

30 dated 28-9-40

Local Department.

In this case land was notified for compulsory acquisition for the construction of houses for the poor at the expense of the Ahmedabad Municipality. The acquisition being at the instance of the Ahmedabad Municipality, the possession of the land has been handed over to the Municipality. On the request of Government, the Municipality has passed a resolution agreeing to transfer the land to Government for the purposes of the construction of houses in pursuance of its housing programme. Presumably the said housing programme appears to be the programme of the Bombay Provincial Housing Board. If so, it is not necessary to go into the question whether the Municipality can transfer to Government any land acquired for its own purpose, although the purpose to which Government intends to put the land may be similar. The Bombay Housing Board Act, 1948, has been passed by the Provincial Legislature and it will become law soon after receiving the necessary assent. Under section 34 of the said Act the Housing Board constituted under it will be competent to acquire any land vesting in the Municipality. No difficulty will then arise in the transfer to the Board of any land vesting in the Municipality. The acquisition proceedings in regard to the land in question should therfore be completed as soon as possible, and after the Board is constituted under the Bombay Housing Board Act, 1948, the Board may take steps for the transfer in its favour of the land in

Quetta

Idl-J-R-D.
22/10

Date.

O.O.

Additional Secretary to Government

Legal Department.

U.R. to Labour Deptt.

No. 9936, dated 23-10-48.

[redacted]

50 dated 26-5-136.

Office of the R.L.A.

There would be no legal objection to Government taking over possession of the whole property which has been already notified; award of compensation may be postponed. In other respects the question whether possession should be taken at this stage in view of the impending litigation is a question of policy

P.M. 16/12

Secretary of Legal Affairs.

U.O. to R.D.No. 12074 dated the 18th December 1948.

Subd. for signature.

SC dated 26-8-'50.

Office of the R.I.A

It appears from paragraph 11 of the notice of suit that the Central Government have already intimated the Liquidators of the Club that the lease was void as the same was not granted in conformity with Rule 28 of the Cantonment Land Administration Rules, 1937. It would therefore appear that the Central Government will have to consider whether the threatened suit if filed can be defended. The plaintiffs have also asked for an interim injunction against the Bombay Government from proceeding with the land acquisition proceedings. The Government will have to oppose the grant of injunction and stay of the land acquisition proceedings when the suit is actually filed. The Bombay Government may proceed with the land acquisition proceedings pending the actual grant of any interim injunction as the question of validity or otherwise of the lease will affect only the amount of compensation payable to the cl

Sd/ R.M.Lad.
16/12

Remembrancer of Legal Affairs.

U.R. to R.D. No.13073 dated the 16th December 1948.

Subd for signature

MM

SC dated 20-5-'50.

Office of the R.L.A.

The effect of the order of the Joint Judge in Compensation Case No. 39 of 1940 is that Survey Nos. 23 and 24/1 were considered to be reasonably required for the full and unimpaired use of the manufactory of Patel Mills Co., Limited, Ahmedabad within the meaning of section 40(1) of the Land Acquisition Act, 1894. It is true that what was considered as reasonably required in 1942 in which year the Joint Judge made the aforesaid declaration for the full and unimpaired use of the manufactory may not be so considered now and in that sense it may be possible to contend that the said decision of the Joint Judge would not operate as res judicata in the present case. But the fact remains that the land was considered in 1942 as reasonably required for the full and unimpaired use of the manufactory. The Mill may not have made any effective use of the land; but the Mill appears to be now contending that it contemplates an extension of the manufactory for which it has obtained from Government import permit for ten thousand spindles and 250 looms. The Mill further contends that the land is needed for providing amenities to the labourers and construction godowns and erecting a purification plant for purifying waste water. If there be substance in any of these contentions, it appears that it would be very difficult for Government to meet the argument of the Mills that the land is needed for the full and unimpaired use of the manufactory. Consequently although there is no legal objection to proceeding with the acquisition of this land, it is likely that the Mill would be able to raise the contention that the land is needed for the full and unimpaired use of the manufactory and succeed in obtaining an order under section 40(1) directing the withdrawal from acquisition of the land.

Contd.

Sdt P M Lad.
30/11
Remembrancer of Legal Affairs.

U.O. to Labour Department, No. 11389 dated the
30th November 1948

Issued

C.S-P
30/11

MF

SC dated 20-6-'50.

No. 11206

Office of the
Remembrancer of Legal Affairs,

Bombay Castle, 13th December 1948.

To

The Collector,
Bombay Suburban District;
Bombay.

Subject:- Acquisition of lands for Aerodrome at Santacruz - Case No.LAO/51/MIL-1.

Sir,

With reference to your endorsement No. L.A./51/MIL-1/1187, dated the 16th October 1948 forwarding a copy of the letter from the Special Land Acquisition Officer, Bombay City and the Bombay Suburban District on the above subject, I have the honour to observe as follows :-

It is clear from pargraph 1 of the award of the Special Land Acquisition Officer, Bombay and Bombay Suburban District, dated the 6th January 1947 that Mr.Pawle and Mrs. Ratu appeared jointly before the Special Land Acquisition Officer in pursuance of the notice under section 9 of the Land Acquisition Act,1894 and requested that the amount of compensation for the lands acquired should be paid to them jointly. No apportionment of the amount of compensation appears, therefore, to have been made by the special Land Acquisition Officer as required by clause (iii) of section 11 of the Act. Under section 9 an, enquiry by the Collector into the respective interests of the persons interested in the land must be made before giving the final award and under section 11 he has to examine their respective claims and determine how the total amount is to be apportioned amongst them. Under section 29 when apportionment is made in pursuance of the agreement, then as between such persons the award shall be conclusive evidence of the correctness of the apportionment and consequently as amongst such persons, a reference under section 18 of an action under the third proviso to section 31(2) would not be maintainable (please see Gupraksh on Land Acquisition pages 526-27). Section 30 provides that when the amount of compensation has been settled under section 11 if any dispute arises as to the apportionment of the same

Contd.

or any part thereof or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court. In paragraph 2 of his letter, the Special Land Acquisition Officer, states that there is a dispute amongst the claimants regarding their respective shares in the amount of compensation. As there is a dispute between the claimants as to their shares in the amount of compensation it may be referred to the Court under section 30 after depositing the amount of compensation in the Court under section 31(2).

Yours faithfully,

O.O. Sd/- P M [illegible]
11/12
Remembrancer of Legal Affairs

Copy forwarded to the Special Land Acquisition Officer, Bombay City and Bombay Suburban District, 614 Custom House, Fort, Bombay for information.

Issued . Submitted for signature

Two copies are dept below

A L R R R 11/13

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SC dated 26-5-'58.

Land Acquisition Act, sections 4, 6 and 17

Ode Eolavani Mandal - Acquisition proceedings whether to continue after injunction to -

Office of the R.L.A.

It appears that on the request of the Ode Eolavani Mandal, which is registered under the Societies Registration Act, 1860, Government issued a notification under section 4 and section 6 of the Land Acquisition Act for acquiring a piece of land for the extension of the School buildings, play ground etc., of the Mandal. The owner of the land filed Civil Suit No. 317 of 1947 contending that the acquisition was unlawful and prayed for an injunction Pending the final disposal of the suit, the Civil Court has issued a temporary injunction prohibiting the Mandal from acquiring the land. The Collector of Kaira considers that the acquisition proceedings will have to be stopped till the injunction is vacated. H.M.(R.D.)observes :

> "No injunction has been issued against Government as Government is not a party. Why should we therefore stay proceedings. If there is no legal necessity we should not stay proceedings and go on with the acquisition".

The questions raised for R.L.A's consideration are : (1) Whether the acquisition proceedings should be proceeded with in spite of the Court's temporary injunction order, and (2) whether in view of the later opinions of the R.L.A, the notifications applying section 17 along with section 4 in this case should be reviewed.

2. It is true that Government is not a party to the Civil Suit No. 317 of 1947 in which the owner has secured a temporary injunction order, but the effect of the temporary injunction order is to prohibit the Mandal from proceeding with acquiring the land. Government has put the Land Acquisitic

Act into operation for the purpose of acquiring the land for the Mandal and the costs of acquisition.

have to be defrayed by the Mandal. Further under section 50(2) of the Land Acquisition Act, the Mandal will have a right to appear and adduce evidence for the purpose of determining the amount of compensation. So long as the temporary injunction order is in operation, the Mandal would be precluded from appearing and adducing evidence for the purpose of determining the amount of compensation. Further, in the event of a permanent injunction being issued by the Court, the acquisition proceedings would be infructuous inasmuch as the Mandal would not be able to take possession of the land from Government and pay the costs of acquisition. As has been observed in 'Rex Vs. Spyer' (1916) 1K.B., 595, which was followed in 48 Cal. 916, Government has got to respect the orders issued by a competent judicial authority though it is not a party to the proceedings. In these circumstances, it would be necessary for Government to stay its hand until the temporary injunction order issued by the Court is vacated.

3. It appears from the notification issued by Government on 30th August 1947 that the notice under section 4 and the notice under section 6 have been issued simultaneously in the same notification with a direction applying the emergency clause. This kind of notification is not proper; for, a notification under section 6 applying the emergency clause can be issued only after an inquiry is made under section 40 and the company has executed an agreement. This obviously contemplates an intervening period between the notification under section 4 and that under section 6. Consequently, these notifications cannot be simultaneously issued (see A.I.R. opinion No. 1935

Contd.

dated the 15th November 1947). The view taken by Secretary, R.D., is correct.

SAF 11/12

Remembrancer of Legal Affairs.

U.R to R.D., No.11813, dated the 13th December 1949

SC dated 26-6-50.

Office of the R.L.A.

Acquisition of land for drainage.

Land Acquisition Act, 1894.

Sections 35,36 and 17.

The view taken by U.S.N.D. that the provisions of sections 35 and 36 of the land Acquisition Act do not apply in the present case is correct. The only feasible course would be either to apply the emergency clause or to take possession by private negotiations.

Sd/ P K [illegible]
19/12
Remembrancer of Legal Affairs.

U.N. to N.D., No 12693 dated the 20th December 1948.

Subd. for signature.

Issued.

C.S-P
20/12

[illegible]

50 dated 20-6-50.